DEPARTMENT OF PERSONNEL ADMINISTRATION

Governor Edmund G. Brown Jr.

MEMORANDUM

DATE: March 4, 2011

TO: Charles Murray, California Citizens Compensation Commission, Chair
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SUBJECT: ***Limitations on California Citizens Compensation Commission's Authority to Adopt Resolutions Prior to Receiving Certification of a Budget Deficit from the Department of Finance***

ISSUE

Can the California Citizens Compensation Commission (Commission) adopt a resolution before the certification of the budget deficit is issued by the Department of Finance?

BRIEF ANSWER

Yes, the Commission may adopt a resolution before the Department of Finance (DOF) issues its certification of the budget deficit. The constitutional provisions governing the Commission contain no express requirement that the Commission wait for DOF's budget certification before adopting resolutions.

However, as a practical matter, if the Commission intends to adopt a resolution increasing the salaries of state officers, it may be prudent (though it is not required) for the Commission to wait for DOF's budget certification. The reason is that any resolution increasing salaries adopted prior to DOF's budget certification will run the risk of being nullified if DOF subsequently issues a budget certification that projects a budget deficit for the current fiscal year. Article III, section 8, subdivision (g) of the California Constitution, as amended by Proposition 1(f), requires nullification of any resolution increasing salaries in a year in which there is a projected budget deficit. Thus, to avoid possible nullification of one of its resolutions, the Commission may find it practical to wait until after it receives DOF's budget certification, though the Commission is certainly not legally required to wait.

Moreover, this precaution would only be necessary for resolutions seeking to increase salaries; a DOF budget certification would not affect resolutions that *decrease* salaries, or resolutions that increase or decrease *benefits* of state officers.

BACKGROUND

The California Citizens Compensation Commission was created in 1990 by Proposition 112. The Commission is empowered by the California Constitution to adjust the salaries and benefits of state officers. The Commission's authority is defined in Article III, section 8 of the California Constitution.[1] In 2009, Proposition 1(f) amended section 8 to prohibit increasing salaries during years in which DOF anticipates a budget deficit.[2] (See Attachment A.)

DPA is informed and believes that DOF has not yet provided the Commission with a budget certification for the current fiscal year. The most recent certification from DOF projected a budget deficit as of June 30, 2010, which was for the previous fiscal year. (Attachment B.)

ANALYSIS

If there is no ambiguity in a statute or constitutional provision, then the plain meaning of the words of the provision governs. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) Subdivision (g) of section 8 defines when the Commission may pass resolutions affecting the salaries or benefits of state officers.

With respect to benefits, subdivision (g) states:

> "[A]t or before the end of each fiscal year, the commission shall, by a resolution adopted by a majority of the membership of the commission, adjust the medical, dental, insurance, and other similar benefits of state officers. The benefits specified in the resolution shall be effective on and after the first Monday of the next December." (Cal. Const., art. III, § 8, subd. (g).)

The plain language of this provision contains no implied or express restriction on when the Commission may adopt a resolution with respect to benefits. Thus, the Commission may adopt a resolution either increasing or decreasing benefits at any time at or before the end of the fiscal year. Such a resolution may be adopted and take effect regardless of when DOF issues its budget certification. (*Id.*)

With respect to salaries, subdivision (g) states:

> "[A]t or before the end of each fiscal year, the commission shall adjust the annual salary of state officers by a resolution adopted by a majority of the membership of the commission. The annual salary specified in the resolution shall be effective on and after the first Monday of the next December, except that a resolution shall not be adopted or take effect in any year that increases the annual salary of any state officer if, on or before the immediately

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[1] All future statutory references will be to Article III, section 8 of the California Constitution, unless otherwise indicated.

[2] Technically, the constitutional amendment states that the Commission's may not raise salaries if DOF certifies "that there will be a negative balance . . . in the Special Fund for Economic Uncertainties in an amount equal to, or greater than, 1 percent of estimated General Fund revenues." This economic condition will be referred to as a "budget deficit" throughout this memo, for the sake of brevity.

> preceding June 1, the Director of Finance certifies to the commission, based on estimates for the current fiscal year, that there will be a negative balance on June 30 of the current fiscal year in the Special Fund for Economic Uncertainties in an amount equal to, or greater than, 1 percent of estimated General Fund revenues." (Cal. Const., art. III, § 8, subd. (g).)

This provision prohibits the Commission from increasing salaries if DOF issues an official certification stating that a budget deficit will exist at the end of the current fiscal year. The prohibition applies only to salary increases, not decreases. Thus, the Commission need not wait for the DOF budget certification for resolutions decreasing salaries.

Where it seeks to increase salaries, the Commission does not technically have to wait for a budget certification before adopting the resolution. However, as a practical matter, if the Commission does not wait for the DOF budget certification, it is possible that the resolution could be nullified by a subsequent certification of a budget deficit by DOF. The Constitution clearly states that "a resolution shall not . . . take effect in any year" in which the DOF certifies on or before June 1 that there is a budget deficit. Thus, even though the Commission may be legally permitted to adopt a resolution increasing salaries prior to the budget certification, there is the risk that the resolution will be nullified by a subsequent certification from DOF. DOF has until June 1, 2010 to issue a certification of a budget deficit for the current fiscal year. If DOF has not issued a certification for the current fiscal year by June 1, a resolution increasing salaries could take effect.

In the present case, DPA is informed and believes that DOF has not yet provided the Commission with a budget certification for the current fiscal year. The most recent certification from DOF forecasted a budget deficit as of June 30, 2010, which was for the previous fiscal year. (Attachment B.) Therefore, the Commission is not currently prohibited from adopting a resolution increasing salaries. However, as noted above, should DOF issue a certification affirming the existence of a budget deficit sometime before June 1, 2011, then the Commission would be prohibited from adopting a resolution increasing salaries. Moreover, any resolution increasing salaries adopted prior to that certification would be rendered null and void. The Commission may adopt a resolution adjusting benefits and/or decreasing salaries, at any time, without risk of nullification by the budget certification.

CONCLUSION

The Commission may, at any time, adopt a resolution adjusting salaries and/or benefits. The Commission is not legally required to wait for a budget certification from the Department of Finance before adopting such resolutions. The constitutional provisions governing the Commission clearly state that it may adopt resolutions at any time at or before the end of the fiscal year.

However, if DOF certifies to the Commission that there will be a budget deficit in the current fiscal year, the Commission may not thereafter adopt a resolution increasing salaries. Any such resolutions adopted before the certification will not take effect. Thus, as a practical matter, in the limited case of resolutions increasing state officer salaries, the Commission may want to wait until after the budget certification to avoid potential nullification of the resolution, though the Commission is not legally required to do so.

Attachment

A

PROPOSITION

1F ELECTED OFFICIALS' SALARIES. PREVENTS PAY INCREASES DURING BUDGET DEFICIT YEARS.

OFFICIAL TITLE AND SUMMARY

ELECTED OFFICIALS' SALARIES.
PREVENTS PAY INCREASES DURING BUDGET DEFICIT YEARS.

- Encourages balanced state budgets by preventing elected Members of the Legislature and statewide constitutional officers, including the Governor, from receiving pay raises in years when the state is running a deficit.
- Directs the Director of Finance to determine whether a given year is a deficit year.
- Prevents the Citizens Compensation Commission from increasing elected officials' salaries in years when the state Special Fund for Economic Uncertainties is in the negative by an amount equal to or greater than one percent of the General Fund.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Minor state savings related to elected state officials' salaries in some cases when the state is expected to end the year with a budget deficit.

FINAL VOTES CAST BY THE LEGISLATURE ON SCA 8 (PROPOSITION 1F)

Senate:	Ayes 39	Noes 0
Assembly:	Ayes 80	Noes 0

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Voter-Created Commission Sets State Official Pay and Benefits. Proposition 112—approved by voters in June 1990—amended the State Constitution to create the California Citizens Compensation Commission. The commission includes seven members appointed by the Governor, none of whom can be a current or former state officer or state employee. The commission establishes the annual salary, as well as medical insurance and other benefits, for the following elected state officials:

- The Legislature (120 Members).
- The Governor.
- The Lieutenant Governor.
- The Attorney General.
- The Controller.
- The Insurance Commissioner.
- The Secretary of State.
- The Superintendent of Public Instruction.
- The Treasurer.
- The Board of Equalization (4 Members).

While the commission has control over most pay and benefits received by these state officials, there are certain exceptions. For example, Members of the Legislature are eligible to receive per diem payments to cover lodging, meals, and other expenses for each day of attendance at legislative sessions. The level of per diem payments is set by another state board and not by the commission. In addition, under Proposition 140 (approved by voters in November 1990), Members of the Legislature have been prohibited from earning state retirement benefits since November 1990. Accordingly, the commission has no control over these retirement benefits.

Factors the Commission Considers When Setting State Officials' Pay and Benefits. Proposition 112 requires the commission to consider the following factors when it adjusts the annual salary and benefits of state officials:

- How much time is required to perform official duties, functions, and services.
- The annual salary and benefits for other elected and appointed officials in California with similar responsibilities, including judicial and private-sector officials.

- The responsibility and scope of authority of the state official.

Currently, the Constitution does not list the financial condition of the state as a factor the commission must consider when setting the pay and benefits of these officials. In addition, Proposition 6—approved by voters in November 1972—prohibits the reduction of elected state officials' salaries during their terms of office.

Current Salaries of Elected State Officials. Based on past commission decisions, elected state officials are currently eligible to receive annual salaries ranging from $116,000 (for legislators) to $212,000 (for the Governor).

PROPOSAL

This proposition amends the Constitution to prevent the commission from approving increases in the annual salary of elected state officials in certain cases when the state General Fund is expected to end the year with a deficit.

Official Certification of a Deficit Would Be Required. On or before June 1 of each year, the state Director of Finance (who is appointed by the Governor) would be required to notify the commission in certain cases when the state's finances have weakened. Specifically, the Director would notify the commission if the Special Fund for Economic Uncertainties (SFEU) is expected to have a negative balance equal to or greater than 1 percent of the annual revenues of the state General Fund on June 30 (the last day of the state's fiscal year). As described in the analysis of Proposition 1A (also on this ballot), the SFEU is the state's traditional rainy day reserve fund. Currently, 1 percent of General Fund revenues is almost $1 billion.

Certification of the Deficit Would Prevent Raises for Elected State Officials. In years when the commission chooses to adjust state officers' pay and benefits, it already is required to pass a resolution to do this before June 30. These pay and benefit adjustments take effect beginning in December. Under this measure, if the Director of Finance certifies that the SFEU will end the month of June with a deficit of 1 percent or more of General Fund revenues, state officials will not be eligible to receive a salary increase to take effect in December of that year.

FISCAL EFFECTS

Cost Savings From State Officials' Salaries During Certain Deficit Years. This measure would prevent the commission from approving pay increases for state officials in certain cases when the state General Fund is expected to end the year with a deficit. Under current practice, the commission might have otherwise approved pay increases in those years. The commission does not grant pay increases every year, and the level of pay increases granted by the commission is not always the same. Since January 2000, the commission has raised the pay of elected officials four times. Over this period, the total pay increases for each official have been equal to or less than the rate of inflation. Currently, a 1 percent raise for the elected state officials costs the state about $160,000 per year. If, for example, the commission were inclined to grant the officials a 3 percent raise but were prevented from doing so under this measure, the state would save less than $500,000 that year. Consequently, savings in any year would be minor.

May Contribute to Different Budget Decisions by the Legislature and Governor. The Constitution already requires the Legislature and the Governor to adopt a balanced budget each year. When the budget falls substantially out of balance during the course of a fiscal year, the Constitution allows the Governor to declare a fiscal emergency and call the Legislature into a special session to address the emergency. The Constitution, however, does not require the budget to *end* the year in balance. This measure may have the effect of influencing the Legislature and the Governor to make different budgetary decisions—decisions, for example, that reduce a projected state deficit or make it less likely a deficit emerges in the first place. These impacts, however, are not possible to estimate.

For text of Proposition 1F, see page 56.

Attachment

B

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

May 28, 2010

Members of the California Citizens Compensation Commission

2009-10 Certification of a Negative Balance in the Special Fund for Economic Uncertainties

Section 8 of Article III of the State Constitution calls for the Director of Finance to certify to the California Citizens Compensation Commission the estimated balance in the Special Fund for Economic Uncertainties for the current fiscal year by June 1.

I hereby certify that on June 30, 2010, there will be a negative balance in the Special Fund for Economic Uncertainties for the current fiscal year in an amount equal to, or greater than, 1 percent of estimated General Fund revenues. The basis for this certification is the 2010-11 May Revision, which is the latest information available.

	(in millions)
Estimated Special Fund for Economic Uncertainties (SFEU) as of June 30, 2010	-$6,842
Estimated 2009-10 General Fund Revenues	$86,074
Estimated SFEU Deficit as a Percent of Estimated General Fund Revenues	-7.95%

Sincerely,

ANA J. MATOSANTOS
Director